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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

HPEV, Inc., a Nevada corporation,

Plaintiff,

vs.

SPIRIT BEAR LIMITED, a Delaware corporation,

Defendant.

CASE NO. 2:13-cv-01548-JAD-GWF

**STIPULATION AND  
ORDER FOR DISMISSAL**

SPIRIT BEAR LIMITED, a Delaware corporation, on behalf of HPEV, INC., a Nevada corporation,

Third-Party Plaintiff,

vs.

TIMOTHY J. HASSETT, QUENTIN D. PONDER, JUDSON W. BIBB III, THEODORE H. BANZHAF, AND MARK M. HODOWANEC,

Third-Party Defendants.

and

HPEV, INC., a Nevada corporation,

Nominal Counterdefendant.

SPIRIT BEAR LIMITED, a Delaware corporation,

1 Counterclaimant,  
2 vs.  
3 HPEV, INC., a Nevada corporation, )  
4 Counterdefendant.  
5

6 IT IS HEREBY STIPULATED, by and between Plaintiff/Counterdefendant HPEV, Inc.  
7 (“HPEV”) and Third-Party Defendants Timothy J. Hassett, Quentin D. Ponder, Judson W. Bibb  
8 III, and Theodore H. Banzhaf, (“Third-Party Defendants”), as well as Defendant/Third-Party  
9 Plaintiff/Counterclaimant Spirit Bear Limited (“SBL”), by and through their counsel of record,  
10 that:

11 The Court should issue an Order dismissing, without prejudice, the direct claims filed by  
12 HPEV against SBL and the direct claims asserted by SBL against HPEV;

13 In support of the Stipulation and Order sought by the parties, the undersigned advise the  
14 Court as follows:

15 **I. MATTERS PENDING BEFORE THE COURT**

16 1. This matter was originally commenced with the filing of a Complaint by HPEV,  
17 INC. (“HPEV”), a Nevada corporation, against SBL, a Delaware corporation, and Jay Palmer,  
18 Carrie Ann Dwyer and Donica Holt. [See Dkt 1].

19 2. Following various pre-Answer filings, HPEV ultimately filed, on October 9,  
20 2013, a First Amended Complaint (“FAC”) wherein it removed its claims against Jay Palmer,  
21 Carrie Ann Dwyer and Donica Holt individually, and only pursued claims against SBL. [FAC at  
22 Dkt 29].

23 3. On October 28, 2013, SBL filed its Answer to the FAC and included a Verified  
24 Derivative Counter & Third-Party Claim on behalf of HPEV (which was named as a nominal  
25 defendant) and against Timothy J. Hassett (“Hassett”), Quentin D. Ponder (“Ponder”), Judson W.  
26 Bibb III (“Bibb”), Theodore H. Banzhaf (“Banzhaf”) and Mark Hodowanec (“Hodowanec”).  
27 [Dkt. 38]. Collectively, Hassett, Ponder, Bibb and Banzhaf are hereinafter referred to as  
28 “Management Officers & Directors” as well as the “Third-Party Defendants.”



**III. ACTIVITY SINCE ENTRY OF DKT 167**

11. HPEV certifies to the Court that the approved Notice was sent to shareholders of record within 10 days of the Order.

12. Court records indicate that no objections to the DASA were filed with the Court as of April 30, 2015.

13. A dispute arose concerning the payment of the Purchase Funds to escrow within the time frame specified in the SRA, and the parties entered into negotiations concerning how to proceed. The result of the parties' negotiations was a new Settlement and Release Agreement dated and effective May 1, 2015 which eliminated the purchase requirement of the January SRA and recognized that the January SRA was not in effect (the "May SRA"). [See Exhibit A]. The May SRA was later amended by the First Amended Settlement Agreement (the "FASA"). [See attached Exhibit B].

14. Pursuant to the FASA, within ten (10) days of June 1, 2015, the parties were to seek the dismissal of this action, without prejudice, as to the direct claims of HPEV against SBL and SBL's direct claims against HPEV. Inadvertently, no stipulation to dismiss the direct actions has yet been filed with the Court.

15. There is no just cause for delaying the entry of an Order dismissing, without prejudice, the direct claims filed by HPEV against SBL and the direct claims asserted by SBL against HPEV.

16. The parties acknowledge that a Derivative Action Settlement Agreement was attached to the May SRA and FASA. For the avoidance of doubt, this Stipulation and Order to dismiss without prejudice does not address the derivative action SBL brought on behalf of HPEV stockholders (the "Derivative Claims") other than to acknowledge that SBL and HPEV agreed to take certain actions with regard to the Derivative Claims.

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17. It is currently anticipated that HPEV will file a motion or the parties will submit a stipulation addressing future procedures necessary and proper for the ultimate resolution of the Derivative Claims, which will comply with Fed.R.Civ.P. 23.1(c).

DATED this 28<sup>th</sup> day of August, 2015.

DATED this 28<sup>th</sup> day of August, 2015.

GORDON SILVER

MARQUIS AURBACH COFFING

/s/ Mark S. Dzarnoski

/s/ Vincent J. Vitatoe

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Attorneys for Defendant/Counterclaimant

W. Bibb, and Theodore H. Banzhaf

Spirit Bear Limited

**ORDER**

The Court, having reviewed the stipulation of the parties, and good cause appearing therefore,

IT IS HEREBY ORDERED as follows:

The direct claims filed by HPEV against SBL and the direct claims asserted by SBL against HPEV are hereby dismissed, without prejudice.

IT IS SO ORDERED.

  
UNITED STATES DISTRICT COURT JUDGE

Dated: September 1, 2015

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